without any alteration in a subsequent statute, I conceive that the Legislature must be taken to have used them according to the meaning which a Court of competent jurisdiction has given to them."

Again in *Barlow* v. *Teal*, 15 Q.B.D. 403, Lord Coleridge, C. J., says:—

"Where cases have been decided on particular forms of words, in Courts, and Acts of Parliament use those forms of words which have received judicial construction, in the absence of anything in the Acts shewing that the Legislature did not mean to use the words in the sense attributed to them by the Courts, the presumption is that Parliament did so use them."

And the case of *Greaves* v. *Tofield*, 14 Ch.D. 563, James, L. J., says:—

"If an Act of Parliament uses the same language which was used in a former Act of Parliament referring to the subject, and passed with the same purpose, and for the same object, the safe and well-known rule of construction is to assume that the Legislature when using well-known words upon which there have been well-known decisions uses those words in the sense which the decisions have attached to them."

Applying this principle to this case, it seems to me to be an irresistible conclusion that the word 'person' as used in the Public Authorities Protection Enactment does not apply to the State. The wording of the Enactment is substantially similar; the preamble, if I may so call it, if read in the ordinary sense of words appears to refer to the protection of individual officers; and I do not think that the substitution of the word 'persons' in that preamble for the word 'officers' in the heading to section 130 of the Land Enactment, is sufficient to show that the Legislature did not mean to use the word in the sense attributed to it by the Courts. I adopt with respect the words employed by Woodward, C. J., in *Naested's* case:—

"Had the intention been to protect the State, as well as the officer, it would have been easy to make that clear by the use of somewhat different language."

In my opinion, therefore, the word 'person' in section 2 of this Enactment does not include the State, and in that case the 1st defendant is not entitled to have his costs taxed as between solicitor and client and the order will be that they be taxed as between party and party.

Order accordingly.

[APPELLATE CRIMINAL JURISDICTION]

BURTON, J.

March 29, 1934.

PUBLIC PROSECUTOR.....Appellant

vs.

MANAGER, GREAT EASTERN PARK, KUALA LUMPUR,.....Respondent

[SELANGOR MAGISTRATES' CRIMINAL APPEAL No. 4 of 1934]

The Theatres Enactment, 1910, Section 9 sub-section (iii)—Breach of conditions of licence —Responsibility of licensee.

Only a licensee can be convicted under the provisions of section 9, sub-section (iii) of the Theatres Enactment, 1917.

It is impossible for the licensing officer to create an offence against a stranger by a condition endorsed on a licence to which he is not a party.

It is inconsistent with the scheme of this Enactment that the legislature intended that the licensee should be responsible for a breach committed by himself, and not by his servants.

R. C. Cussen, Deputy Legal Adviser, for the appellant.

J. T. Tesswill for the respondent.

Cur. Ad. Vult.

BURTON, J. — In December, 1933, A. Ponnampalam was the Manager of the Great Eastern Park, Kuala Lumpur. On 30th. December, 1933, a licence was issued to the "Manager, Great Eastern Park" to carry on a Chinese Wayang Performance for three days, subject to a condition endorsed on the back:—

"This licence is subject to the condition that all metal instruments including gongs and cymbals and drums and horns electric or otherwise shall not be used."

On 30th December, at 4.35 p.m., two Police Officers visited the Park, went inside the Cantonese Wayang and found some persons seated on the stage away from the audience playing cymbals. The Manager, Great Eastern Park, Kuala Lumpur was charged with a breach of his licence under section 9 (iii) of the Theatres Enactment and acquitted. The Public Prosecutor now appeals against this acquittal.

The Magistrate held that "every person" in section 9(iii) does not necessarily refer to the holder of the licence, that the two musicians themselves might have been prosecuted and that the Manager should have been charged with abetting them. If he held this view, the Magistrate should not have acquitted but should have altered the charge in accordance with section 171(h) of the Criminal Procedure Code.

Section 9(iii) of the Theatres Enactment provides that:—

"Every person who shall commit any breach of the conditions of the licence shall

be liable upon conviction before a Magistrate to a fine not exceeding five hundred dollars."

Now I think it is clear that no one but a licensee can be convicted under this sub-section. It is obviously not possible for the Licensing Officer to create an offence against a stranger by a condition endorsed on a licence to which he is not a party. The view of the Magistrate, therefore, that the musicians could be prosecuted and the defendant charged with abetting them is incorrect. No one but Ponnampalam could be convicted of the offence charged. If he is to be convicted, therefore, he must be convicted for the act of the musicians. Ponnampalam was not there.

In *Halsbury's* Laws of England, Edition 2, Vol. IX, page 13 the law is stated as follows:—

> "In the limited class of cases where a particular interest or state of mind is not of the essence of the offence, the acts or defaults of a servant or agent in the ordinary course of his employment may make the master or principal criminally liable, although he was not aware of such acts or defaults, and even where they were against his orders."

Now I think that it is inconsistent with the scheme of the Enactment and also with common sense to assume that the Legislature intended that the licensee should be responsible only for a breach committed by himself, and not by his servants; otherwise he might stand mute among a large brass orchestra and defy the licensing officer, or stand by while his doorkeepers admitted a prohibited number of people to the auditorium.

In *The Attorney General* v. *Siddons*, 1 C. & J. 220: 140 E.R. 1400, the absent master was convicted because his servant concealed smuggled goods in the conduct of the master's business.

Alexander, L.C.B. said:—

> "Now it appears to me that.....
> .....whatever a servant does in the course of the employment with which he is entrusted, and as a part of it, is the master's act. The legal presumption is so, unless the contrary be shewn. It is the presumption that the master authorised it.
>
> This is admitted to be true, as far as civil liability goes; but it is argued that it is not true as to criminal or penal consequences. How far this rule may be entered in criminal proceedings, I will not upon this occasion presume to say, but, to a certain extent, it unquestionably has been applied to criminal proceedings.....
> .....It is not necessary for me, however, upon the present occasion and for the present purpose, to say how far this principle might extend, for I think it quite clear that it extends to this case. The provisions of the legislature would be inefficacious if the master for whose benefit the operation is intended, were to escape these penalties which the legislature has imposed, where the act was done in pursuance of the general purpose which the servant was undoubtedly authorised by the master to carry into effect. It is evident that all these provisions would, but for this construction be unavailing."

This reasoning in my opinion is appropriate to our case and I think therefore the Magistrate's view was erroneous, and that Ponnampalam ought to have been convicted.

[The judgment here proceeds to deal with the question of the form and service of the summons—Editor].

Appeal allowed.

[ORIGINAL CIVIL JURISDICTION]

THOMAS, C.J.

May 18, 1934.

PUBLIC TRUSTEE, FEDERATED MALAY STATES..... .....Plaintiff.

vs.

W. GERMAN.....Defendant

[SELANGOR ORIGINATING SUMMONS No. 45 of 1934]

Probate & Administration Enactment, 1920, Ss. 70, 74; Rule 29 made under S. 74 (i) & (ii), Courts Enactment—Will—Attestation—Attesting witness an interested party—Validity.

In the Federated Malay States a Will is valid notwithstanding that one of the attesting witnesses is interested as a legatee or otherwise takes benefit thereunder.

Rule 29 of the Rules made under Sec. 77 (i), (ii) of the Courts Enactment (Gazette Notification No. 2179 of 1916) is *ultra vires* in so far as it relates to the admissibility of the evidence of an attesting witness, who is a legatee, or imposes any condition on such attesting witness.

Yong Shook Lin for the plaintiff.

E. A. S. Wagner for the defendant.

The facts appear sufficiently from the judgment below.

Cur. Ad. Vult.

THOMAS, C.J.—Mr. Samuel Scott, who will be subsequently referred to as the testator, made a will dated the 13th of April, 1933. This will is very short, and so may be set out in full.

> "I will and bequeath to W. German, Kuala Lumpur, the sum of dollars three thousand, if he is still alive at the time of my decease.
>
> My estate to be looked after by the Public Trustee as my executor. Fifty pounds sterling to Miss Risdon. Fifty